

Message Text

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SUBJ: INTERPRETATION OF ITALIAN LAW ON COMPULSORY PATENT LICENSING

REF: STATE A-3765

1. SUMMARY/. EMBASSY AND AMCONGEN MILAN HAVE WORKED TOGETHER TO ATTEMPT TO RESOLVE PATENT PROBLEM DESCRIBED IN REFTTEL CONCERNING AMERICET COMPANY CONCO AND BROUGHT TO DEPARTMENT'S ATTENTION BY REP. CORCORAN. THOUGH WE HAVE NOT RESOLVED PROBLEM, WE BELIEVE A DECISION IS IN SIGHT. END SUMMARY.

2. UPON REQUEST BY THE EMBASSY, THE AMERICAN CONSULATE GENERAL AT MILAN DISCUSSED THE COMPULSORY LICENSING PROBLEM OF CONCO INC. WITH DR.GUIDO MODIANO AND MR.FARAGGIANA, BOTH OF WHOM WORK IN MILAN. (PLEASE NOTE THAT NEITHER DR.MODIANO NOR MR.FARAGGIANA IS A LAWYER. HOWEVER, BOTH OF THEM ARE EXPERTS IN INDUSTRIAL PROPERTY PROBLEMS).

3. THE GENERAL VIEWS EXPRESSED BY THE ABOVE-MENTIONED EXPERTS ARE SUBSTANTIALLY THOSE CONTAINED IN THE LETTER OF AUGUST 2, 1977, FROM MR.MODIANO, A COPY OF WHICH WAS ENCLOSED WITH DEPARTMENT'S A-3765. THE ONLY DIFFERENCE IS THAT WHILE MODIANO BELIEVES UNCLASSIFIED

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THAT PROF. SEBASTIANO SAMPERI, DIRECTOR OF THE ITALIAN PATENT OFFICE, TAKES A PROTECTIVE ATTITUDE TOWARD THE ITALIAN COMPANIES, FARAGGIANA DOES NOT THINK THAT SAMPERI TACKLES THAT ATTITUDE.

4. BOTH DR.MODIANO AND MR.FARAGGIANA SUGGESTED AN INFORMAL CONTACT WITH PROF.SAMPERI PROVIDED THAT THIS COULD BE ACCOMPLISHED ON A FRIENDLY BASIS.

5. IN VIEW OF ITS LONGSTANDING, EXCELLENT RELATIONS WITH PROF. SAMPERI, THE EMBASSY TOOK UP THE CONCO PROBLEM WITH HIM INFORMALLY AND WITH THE UNDERSTANDING THAT HIS VIEWS WERE BEING SOUGHT PURELY ON AN INFORMATIVE AND FRIENDLY BASIS.

6. PROF.SAMPERI DID CONFIRM THAT HE IS PERSONALLY UNHAPPY ABOUT THE 1968 LAW, WHICH REPEALED THE PATENT FORFEITURE PROVISIONS FOR NON-EXPLOITATION OF PATENTS, CONTAINED IN PREVIOUS LEGISLATION, FOR THE REASONS MENTIONED IN DR.MODIANO'S LETTER. HOWEVER, HE DOES FEEL IT IS HIS DUTY TO APPLY THE NEW REGULATIONS HONESTLY AND FAIRLY.

7. PROF.SAMPERI STATED THE CONCO CASE PRESENTS PERPLEXING ASPECTS, PRINCIPALLY IN VIEW OF THE INFREINGEMENT SUIT FILED BY CONCO AGAINST DALMEC AND THE FACT THAT A COURT DECISION ON THIS CASE HAS NOT YET BEEN RENDERED. NEVERTHELESS, HE AND HIS COLLEAGUES IN THE PATENT OFFICE ARE IN THE PROCESS OF EXAMINING ALL OF THE FACTS RELATIVE TO THIS CASE, INCLUDING AN INVESTIGATION TO DETERMINE WHETHER PNEUMECCANICA IS IN A POSITION TO PRODUCE THE ITEMS COVERED BY THE PATENT IN QUESTION.

8. A DECISION TO GRANT OR DENY THE LICENSE REQUESTED BY PNEUMECCANICA WILL BE MADE BY THE PATENT OFFICE, BY THE END OF THE YEAR, IN THE LIGHT OF ARTICLES 1/2 OF THE 1968 LAW.

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9. PROF.SAMPERI POINTED OUT THAT THIS DECISION IS REQUIRED TO BE IMPLEMENTED BY DECREE OF THE MINISTER OF INDUSTRY AND COMMERCE. THIS PROCEDURE IMPLIES ONLY PRO-FORMA APPROVAL BY THE MINISTER. HOWEVER, DR. SAMPERI STATED IRONICALLY THAT IF THE PATENT OFFICE DECIDES TO GRANT THE APPLICATION BY PNEUMECCANICA AND THE THREAT BY DR.MODIANO IS EVENTUALLY CARRIED OUT (I.E.BY HAVING THE AMERICAN AND GERMAN AMBASSADORS CONTACT THE MINISTER OF INDUSTRY AND COMMERCE), IT IS ENTIRELY POSSIBLE THAT THE MINISTER OF INDUSTRY AND COMMERCE MAY REFUSE TO APPROVE AND SIGN THAT DECREE AND POSTPONE ACTION INDEFINITELY. SAMPERI CONCLUDED THAT THE DECISION REFLECTED IN THE DECREE OF THE MINISTER OF INDUSTRY AND COMMERCE MAY, IN ANY EVENT, BE APPEALED IN ROME BEFORE THE COURT OF ACCOUNTS (AN ADMINISTRATIVE COURT) AND OR THE COMPETENT JUDICIAL COURT.

10. EMBASSY'S COMMENT. THE EMBASSY BELIEVES THAT ITS INFORMAL INQUIRY WITH PROF.SAMPERI MAY HAVE BEEN USEFUL IN THE SENSE, AT LEAST, THAT THE ACTIONS OF THE ITALIAN PATENT OFFICE REGARDING THE CONCO CASE ARE BEING QUOTE OBSERVED UNQUOTE BY THE U.S. AUTHORITIES. HOPEFULLY, THIS WILL DISCOURAGE ARBITRARY INTERPRETATION OF THE 1968 LAW IN THIS CASE. ADDITIONALLY, WE RECOMMEND THAT, IF CONCO WANTS TO TAKE THE NEXT STEP, CONCO WOULD BE WELL ADVISED TO HAVE AN ATTORNEY PRESENT

THEIR POSITION TO THE PATENT OFFICE. PATENT AGENTS ARE IN TOO
VULNERABLE A POSITION TO GO THAT ROUTE IN WHAT FOR THEM IS
A PROCEDURAL MATTER. THAT IS, THEIR DAILY CONTACTS WITH THE
PATENT OFFICE COULD BE JEOPARDIZED BY THIS SINGLE CASE.GARDNER

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